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Supreme Court, U.S.
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In The

Supreme Court of the United States

ESTATE OF JOSEPHINE COSIO, et al.,

Petitioners,

v.

DENNIS F. ALVAREZ, et al.,

Respondents.

On Petition For Writ Of Certiorari To The Eleventh Circuit Court Of Appeals

PETITION FOR WRIT OF CERTIORARI

RICHARD E. WOLFE, ESQUIRE
Florida Bar No. 0127205
RICHARD E. WOLFE, P.A.
3035 5th Avenue North
St. Petersburg, FL 33713
(727) 323-5514
Fax (727) 323-5519
Attorney for Petitioners

COCKLE LAW BRIEF PRINTING CO (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether a mentally handicapped citizen is part of a "class" as defined and afforded protection under 42 U.S.C. § 1985(3)?

2. Whether the lower courts wrongfully dismissed a cognizable legal cause of action pursuant to 42 U.S.C. § 1985?

LIST OF PARTIES TO PROCEEDING

The following is an alphabetic list of all parties to the proceeding in the court whose judgment is sought to be reviewed, including subsidiaries, conglomerates, affiliates and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Beverly Enterprises
2. Carl Cosio
3. Estate of Josephine Cosio
4. Barbara Boyd Keithly
5. Leroy Merkle, Jr., Esquire
6. Tampa Health Care
7. Dr. Oswald Williams

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PETITION FOR WRIT OF CERTIORARI

OPINIONS AND ORDER

The opinion of the Middle District of Florida is unreported. (Pet. App. 5). The opinion of the Eleventh Circuit Court of Appeals is currently unreported. (Pet. App. 1).

JURISDICTION

The decision of the Middle District of Florida was entered October 7, 2005. The decision of the Eleventh Circuit Court of Appeals was entered on May 23, 2006. This Court has jurisdiction under 28 U.S.C. § 1254 (2000).

STATUTORY PROVISION INVOLVED

42 U.S.C. § 1985(3) (2000)

(3) Depriving person of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or in the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United

> States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

STATEMENT OF THE CASE

On September 22, 2004 the Petitioners, with representation from the undersigned, filed their Second Amended Complaint alleging constitutional violations by several Defendants pursuant to 42 U.S.C. § 1985. (Pet. App. 9). The Respondents filed Motions to Dismiss the Second Amend Complaint alleging that the Petitioners had failed to allege a cognizable cause of action pursuant to 42 U.S.C. § 1985(3).

On October 7, 2005, the Middle District of Florida entered an Order dismissing all constitutional claims against all Defendants including the Section 1985(3) claim. (Pet. App. 5). The Eleventh Circuit Court of Appeals affirmed this ruling on May 23, 2006. (Pet. App. 1). The basis for the District Court's original Subject Matter Jurisdiction is pursuant to 28 U.S.C. § 1331 for cases and controversies arising under the United States Constitution. The basis for the Court of Appeals' appellate

jurisdiction is pursuant to 28 U.S.C. § 1291 for appeals of final orders.

SUMMARY OF FACTS

Petitioner Cosio was the exclusive caretaker of his elderly mother, Josephine Cosio, from 1991 until 1995 in their home in which they co-habitated. (Pet. App. 11). During that period of time, Petitioner Cosio performed the task of guardian of his mother's financial and medical care in the exceptional matter that a son is expected to care for his mother. *Id.* During this period of time, Petitioner Cosio effectively arranged for his mother's admission into a skilled nursing facility on two (2) separate occasions pursuant to her physician's orders. *Id.* During this period of time, Petitioner Cosio also initiated an application for Medicaid benefits to pay for his mother's nursing home care. *Id.* At all times, the application for Medicaid benefits was pending, the nursing home facilities were being partially compensated through Josephine Cosio's social security checks, Medicaid and Blue Cross/Blue Shield insurance policies. *Id.* Cosio was also paying for his mother's prescription drugs during this time. *Id.* These payments were made at the suggestion of Respondent, Tampa Health. *Id.*

During Josephine Cosio's stay with Respondent, Tampa Health, Petitioner Cosio had difficulties proving his mother's qualifications for Medicaid for a significant period of time because of a bank account he had placed his mother's name on that contained a significant amount of money. (Pet. App. 12). The reason Petitioner Cosio placed his mother's name on the account was exclusively for

estate planning purposes. *Id.* Medicaid required extensive proof of Josephine Cosio's non-ownership of any of Petitioner Cosio's money accounts and the application process extended for a significant period of time. *Id.* During this period of time Petitioner Cosio kept Respondent, Tampa Health, advised of the status of the Medicaid application. *Id.*

In 1995, Petitioner Cosio again admitted his mother into Respondent, Tampa Health's, nursing home facility because of health concerns. *Id.* On or about September 1995, Petitioner Cosio had to temporarily travel to Kansas City, Missouri in order to resolve issues with his second home being broken into. *Id.* Petitioner Cosio left several contact numbers with employees for the Respondent, Tampa Health, and called to speak to his mother on a daily basis while away. *Id.* Petitioner Cosio's multiple contact numbers while away were placed in the front of Josephine Cosio's medical file with Respondent, Tampa Health. *Id.*

While Petitioner Cosio was in Kansas City, Respondent, Tampa Health, decided to no longer accept Josephine Cosio's partial payments through social security, Medicaid or Blue Cross/Blue Shield insurance pending full payment from Medicaid. (Pet. App. 13). Instead, Respondent, Tampa Health, contacted Respondents, Boyd and Merkle (licensed guardian and guardianship attorney), requesting a guardianship be established so that Respondent Tampa Health could be paid in full from the money accounts at issue. *Id.* Prior to making this decision, Respondent Tampa Health became aware of the substantial sum of money in Petitioner Cosio's account in which his mother was listed as an account holder. *Id.*

On September 28, 1995, Respondents Boyd and Merkle successfully petitioned the Hillsborough County Circuit Court to be named as emergency temporary guardian of Josephine Cosio. *Id.* Respondents Tampa Health, Boyd and Merkle failed to contact Petitioner Cosio prior to enacting this extraordinary procedure. *Id.* On November 16, 1995, Respondents Boyd and Merkle successfully petitioned the court to have Respondent Boyd become plenary guardian of Josephine Cosio. *Id.* Upon said appointment, Respondents Boyd and Merkle immediately began proceedings to seize the bank accounts of Petitioner Cosio and take possession of the homestead shared between Petitioner Cosio and his mother. *Id.*

Upon returning home from his trip from Kansas City, Petitioner Cosio discovered that he had been locked out of his home (in which he had lived his entire life and contained all his possessions) and was advised that the homestead was being marketed for sale. (Pet. App. 14). Petitioner Cosio immediately made objections to the actions of Respondents Boyd and Merkle as well as objections to Respondent Boyd being the named guardian of his mother. *Id.* Respondents Boyd and Merkle defended the need for a guardian on the basis that Petitioner Cosio was stealing funds out of his own bank account and was therefore unfit to be her guardian. *Id.* Respondent Boyd and Merkle had no basis for this allegation which also resulted in a fraud investigation by law enforcement. *Id.*

On or about January of 1996, after Petitioner Cosio complied with all requests from Medicaid, Josephine Cosio obtained conditional approval of her application for Medicaid coverage, which was retroactive to April 1995. *Id.* Respondent Tampa Health was receiving full payment for all services for Josephine Cosio's care after this point in

time. *Id.* Following this determination, the Hillsborough County Circuit Court ruled that the funds contained in the accounts at issue were owned exclusively by Petitioner Cosio and his mother was only placed on the account for estate planning purposes. *Id.* Petitioner Cosio was cleared of any accusations or charges of fraud involving his mother. *Id.* Petitioner Cosio also advised the Court that he would pay any monies for his mother's care that was not being paid by Medicaid after approval of his mother's application. (Pet. App. 15).

On August 7, 1997, Respondents Boyd and Merkle submitted a bill for their services and attempted to collect from both Josephine Cosio's protected homestead and Petitioner Cosio individually. *Id.* At this point in time, Josephine Cosio's finances were only her social security, her three (3) named trust funds and her homestead property. *Id.* Respondent Boyd and Merkle had no duties to conduct other than ensuring Josephine Cosio was obtaining proper medical care.[1] *Id.* On June 5, 1998, Respondents Boyd and Merkle requested that the Hillsborough County Circuit Court approve the fees submitted by Boyd and Merkle and force a sell of Petitioner Cosio's homesteaded property. *Id.* The Hillsborough County Circuit Court granted said award of fees and ruled the sale of the homesteaded property. *Id.* The Court's Order went even further by ordering that Petitioner Cosio personally pay the fees of Boyd and Merkle. *Id.* Petitioner Cosio appealed this Order but was forced to defend ongoing

[1] Respondents Boyd and Merkle had also entered into the guardianship of Josephine Cosio with the understanding that their fees and costs may not be reimbursed by Josephine Cosio's assets if she was found indigent. *Id.*

attempts by Respondents Boyd and Merkle to collect their fees from the Petitioner Cosio personally. *Id.*

On or about August of 1998, Respondents Boyd and Merkle initiated an illegal "forced sale" of Petitioner Cosio's homestead property to collect their fees and Petitioner Cosio was forced to either purchase the home or lose his prospective inheritance in a forced sale. (Pet. App. 15). Petitioner Cosio ultimately purchased his homestead property through the "forced sale" and the proceeds resolved a portion of the Respondents' fees. *Id.*

On February 4, 2000, the Second District Court of Appeals reversed the ruling of the Hillsborough County Circuit Court and held that Petitioner Cosio is not personally responsible for the fees of Respondents Boyd and Merkle. *Id.* Respondents Boyd and Merkle filed a Writ of Certiorari with the Florida Supreme Court but continued to ignore the holding of the Second District Court of Appeals and attempted to continue collecting their fees while the Writ was pending. *Id.* These actions included filing a civil complaint against Petitioner Cosio on June 14, 2000 again alleging that Petitioner Cosio was personally responsible for their fees. *Id.* The Writ of Certiorari was eventually denied by the Florida Supreme Court. *Id.*

During all the above-mentioned legal proceedings, the Respondents Boyd and Merkle continuously refused to turn over the guardianship of Josephine Cosio to her son even though they had no interest in Josephine Cosio's care other than keeping the guardianship open in an attempt to collect their fees. *Id.* Respondents Boyd and Merkle began a pattern of retaliatory actions against Petitioners Josephine Cosio and Cosio by failing to provide adequate care or approve requested medical treatment and refusal to

allow Petitioner Cosio to obtain any of the services needed to maintain the health of his mother. (Pet. App. 17). Respondent Tampa Health also refused to provide needed medical testing and treatment as a result of the interference of the Respondents Boyd and Merkle. *Id.* Further, Respondents Boyd and Merkle retaliated against Petitioners Josephine Cosio and Cosio by attempting to conceal the location of Josephine Cosio from her son. *Id.* Respondents Boyd and Merkle continued their retaliatory actions even after the death of Josephine Cosio in 2000 by refusing to close the guardianship as required by Florida law. *Id.*

SUMMARY OF THE ARGUMENT

Mentally disabled citizens should be afforded class protection under 42 U.S.C. § 1985(3). This issue is of first impression with this Court and was a case of first impression with the Eleventh Circuit Court of Appeals. The Second, Third and Eighth District Court of Appeals have all found disabled citizens being afforded "class" protection under Section 1985. All these courts recognized that disabled citizens have suffered similar discrimination as women in this country and concluded that they should be afforded protection. The legislative history of 42 U.S.C. § 1985(3) indicates that Congress intended an expansive interpretation of the statute and the mentally disabled is clearly a class of citizen that should be afforded protection. Congress has also indicated their interests in affording protections to disabled citizens through enacting the Americans with Disabilities Act.

The District Court wrongfully dismissed the Petitioners' Section 1985(3) claim. The Second Amended Complaint alleged, in detail, the conspiracy by the Respondents to violate the constitutional rights of the Petitioners as a result of her being in a protected class, a mentally disabled citizen. Under the liberal notice pleading requirements of the Rules of Civil Procedure, the Respondents were properly placed on notice of the claims being made by the Petitioners and the District Court held the Petitioners to a higher standard of pleading upon its dismissal.

ARGUMENT

I. MENTALLY HANDICAPPED CITIZENS SHOULD BE AFFORDED PROTECTION AS A "CLASS" UNDER 42 U.S.C. § 1985(3).

The substantive claim of the Petitioners is a conspiracy to deprive an elderly mentally handicapped individual of her rights under 42 U.S.C. § 1985(3). The Eleventh Circuit affirmed the lower court ruling of dismissal on the basis that the Petitioners could not state a legally cognizable claim under Section 1985 against any of the parties.

To state a claim under 42 U.S.C. § 1985(3) a party must show (1) a conspiracy; (2) for the purposes of depriving, either directly or indirectly, any person or class of persons to the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is injured in his person or property or deprived of any right or privileges of a citizen of the United States. *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 822-29, 103 S.Ct. 3352, 3356, 77 L.Ed.2d 1049 (1983). The Eleventh Circuit affirmed the holding of the district court

that the "class of persons" protected by Section 1985 does not include mentally handicapped individuals.

Section 1985(3) permits an action to be brought by one injured by a conspiracy formed "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws." 42 U.S.C. § 1985(3). It does not create any substantive rights, but permits individuals to enforce substantive rights against conspiring private parties. *Marino v. Bowers*, 657 F.2d 1363, 1371 (3rd Cir. 1981); *Howard v. State Dep't of Highways*, 478 F.2d 581, 585 (10th Cir. 1973).

In *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971) this Court expanded the definition of Section 1985(3) to include claims against private as well as public conspiracies that seek to deprive a class of equal protections under the laws. 403 U.S. at 101, 91 S.Ct. 1790. The finding allowed African-American plaintiffs to use Section 1985(3) to sue their racially motivated white attackers for violating their constitutional right to travel. *Id.* at 103, 106 91 S.Ct. 1790. The *Griffin* Court emphasized that because Section 1985(3) requires the "intent to depriveof equal protection, or equal privileges and immunities," a claimant must allege "some racial, or perhaps otherwise class-based, invidiously discriminatory animus behind the conspirators' action" in order to state a claim. *Id.* at 102, 91 S.Ct. 1790. The phrase "class-based invidiously discriminatory animus" would:

> confine the authority of this law to the prevention of deprivations which shall attack the equality of rights of American citizens; that any violation of the right, the animus and effect of

> which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section.

Id. at 100, 91 S.Ct. 1790 (*quoting* Cong. Globe, 42d Cong., 1st Sess.App. 478 (1871) (Rep. Shellabarger)). Courts have interpreted this to mean that "[i]n order to ensure that a Section 1985(3) class has an independent identifiable existence, a reasonable person must be able to "readily determine by means of an objective criterion or set of criteria who is a member of the group and who is not." *Aulson v. Blanchard*, 83 F.3d 1, 4-5 (1st Cir. 1996).

This Court more recently reviewed Section 1985(3) class based discrimination in *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 269, 113 S.Ct. 753, 122 L.Ed.2d 34 (1993). In *Bray*, this Court held that abortion clinics and organizations that support abortion and have members who may wish to use abortion clinics failed to state a Section 1985(3) claim against an anti-abortion organization whose "conspiratorial" efforts to obstruct access to abortion clinics allegedly deprived women seeking abortions of their right to interstate travel. *Id.* 506 U.S. at 266-67, 113 S.Ct. 753. The Court recognized that women are generally considered a "class" that might substantively qualify for Section 1985(3) protection, the subgroup of "women seeking abortion" is not a qualifying class "the class 'cannot be defined simply as the group of victims of the tortuous action.'" *Id.* at 269-70, 113 S.Ct. 753 (*quoting United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 850, 103 S.Ct. 3352, 77 L.Ed.2d 1049 (Blackmun, J., dissenting)). In making this determination this Court concluded that a class for purposes of Section 1985(3) must be:

> Something more than a group of individuals who share a desire to engage in conduct that the Section 1985(3) defendant disfavors. Otherwise, innumerable tort plaintiffs would be able to assert causes of action under Section 1985(3) by simply defining the aggrieved class as those seeking to engage in the activity the defendant has interfered with. This definitional ploy would convert the statute into the "general federal tort law" it was the very purpose of the animus requirement to avoid.

Id. at 506 U.S. at 269, 113 S.Ct. at 759.

On the issue of whether a mentally disabled individual is a "class" within the meaning of Section 985(3) the courts have split as to the entitlement of protection. The Seventh Circuit in *D'Amato v. Wisconsin Gas Co.*, 760 F.2d 1474 (7th Cir. 1985) and the Tenth Circuit in *Wilhelm v. Continental Title Co.*, 720 F.2d 1173 (10th Cir. 1983) have held that handicapped individuals do not fall within the purview of Section 1985(3). With the ruling by the Eleventh Circuit in the above-styled case, the Eleventh Circuit has apparently joined this group of Circuits even though it is not expressly done.

The first court to recognize mentally handicapped individuals as a "class" for Section 1985(3) protection was the Second Circuit in *People By Abrams v. 11 Cornwell Co.*, 695 F.2d 34 (2nd Cir. 1982). The Court considered a group of mentally retarded citizens' claim that a group of citizens conspired to prevent the purchase of a neighborhood residential home by the mentally retarded citizens. In finding that mentally disabled citizens are afforded "class"

designation under Section 1985(3), they recognized that "[c]ases since *Griffin v. Breckenridge* have been generous in applying section 1985(3) to nonracial classifications, even though some of the classifications would not receive strict scrutiny under the equal protection clause." *Id.* at 44. In doing so, the court recognized that other circuits have held supporters for political candidates, women purchasers of disability insurance and ethnic and religious groups all were appropriate classes for Section 1985(3) protection. *Id.* at 44 (*citing Means v. Wilson*, 522 F.2d 833, 839-40 (8th Cir. 1975), *cert. denied*, 424 U.S. 958, 96 S.Ct. 1436, 47 L.Ed.2d 364 (1976); *Cameron v. Brock*, 473 F.2d 608, 610 (6th Cir. 1973); *Life Insurance Co. of North America v. Reichardt*, 591 F.2d 499 (9th Cir. 1979); ethnic and religious groups. *See, e.g., Marlowe v. Fisher Body*, 489 F.2d 1057 (6th Cir. 1973); *Action v. Gannon*, 450 F.2d 1227 (8th Cir. 1971) (en banc); *Weiss v. Willow Tree Civic Association*, 467 F.Supp. 803, 816-17 (S.D.N.Y. 1979).

The issue of mentally disabled individuals being a "class" under Section 1985(3) was next taken up by the Eighth Circuit in *Larson By Larson v. Miller*, 55 F.3d 1343 (8th Cir. 1995). The court first recognized that women were a recognized "class" by stating "there can be little doubt that Section 1985(3)'s protection extends to women as a class, and particularly to handicapped young girls." *Id.* at 1352. In determining that mentally handicapped individuals should receive "class" protection pursuant to Section 1985(3), the court looked at the congressional findings in passing the Americans With Disabilities Act stating:

> Individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated

> to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

Id. at 1353, *citing* 42 U.S.C. § 12101(a)(7). The Court concluded that "[t]he handicapped, identifiable through the immutable physical characteristics of their individual handicaps, face the same type of invidious discrimination which Section 1985(3) was implemented to prevent . . . [a]s such, we have no difficulty identifying the handicapped as a protected class for purposes of Section 1985(3)." *Id.* at 1353.

The last circuit court of appeals to decide that mentally disabled citizens are afforded protection pursuant to Section 1985(3) was the Third Circuit Court of Appeals in *Lake v. Arnold*, 112 F.3d 682 (3rd Cir. 1997). In *Lake*, the Court recognized the split of authority on the issue of mentally disabled citizens. This Court focused on that fact that "[t]hroughout our history differences in race and color have defined easily identifiable groups which have at times required the aid of the courts in securing equal treatment under the laws . . . [b]ut community prejudices are not static, and from time to time other differences from the community norm may define other groups which need the same protection." *Id.* at 687. The Court recognized the protections that are afforded to gender based claims as compared to disabled citizens. In reaching the conclusion that disabled citizens being afforded protection pursuant to Section 1985(3), the Court concluded:

> When the language and intent of section 1985(3) are examined in light of the relatively recent recognition

> of current and historic prejudice directed toward the handicapped, it is clear that much of our discussion of gender discrimination in Novotny applies with equal force. Discrimination based on handicap, including *mental handicap*, like that based on gender, often rests on immutable characteristics which have no relationship to ability. Where this is the case, we are convinced that the discrimination is invidious and that the reach of section 1985(3) is sufficiently elastic that the scope of its protection may be extended.

Id. at 687. The Court further recognized that "[i]ndividuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society. *Id.* at 688.

In this case, the Petitioner had her rights violated as a direct result of her status as a mentally disabled elderly individual in a nursing home. The division of districts has left the country split on the protections afforded to mentally handicapped individuals. It is imperative that this Court take up this dispute and clarify the scope of Section 1985(3) so that finality and clarity in the law may take hold. The legislature has noted that "[t]he history of discrimination against individuals with disabilities, while less noted than racial or sex discrimination, is no less a story of a group that has traditionally suffered not only physical barriers but the badge of inferiority emplaced by

a society that often shuns their presence." 42 U.S.C. § 12101(a)(7). As noted by other courts:

> "[T]he fact that a person bears no responsibility for [a handicap], combined with the pervasive discrimination practiced against [the mentally retarded] and the emerging rejection of [this discrimination] as incompatible with our ideals of equality convince[s] us that whatever the outer boundaries of the concept, an animus directed against [the mentally retarded] includes the elements of a 'class-based invidiously discriminatory' motivation".

Novotny v. Great American Federal Savings and Loan Association, 584 F.2d 1235 (3rd Cir. 1978). A review of legislative intentions and circuit court determinations should lead this Court to review the extent of Section 1985(3) protections and find that mentally disabled citizens be provided protections as a "class."

II. THE LOWER COURTS WRONGFULLY DISMISSED A COGNIZABLE LEGAL CAUSE OF ACTION PURSUANT TO 42 U.S.C. § 1985.

The Petitioner alleged in Counts X and XII of her Complaint a claim pursuant to 42 U.S.C. § 1985 against Boyd, Merkle, Tampa Health and Dr. Williams. The District Court dismissed these Counts on the basis that "[t]he plaintiffs' complaint fails to allege that the plaintiffs belong to a protected class of citizens entitled to the protections of 42 U.S.C. § 1985 or that any discriminatory animus motivated the defendants to participate in a conspiracy against the plaintiffs." (Pet. App. 5). The Order failed to provide leave to amend any drafting errors. *Id.* The Eleventh Circuit Court of Appeals affirmed the

ruling of the lower court without expressly adopting their finding of failure to make specific pleadings.

On a motion to dismiss for failure to state a claim, the Court must accept as true the facts as alleged in the complaint. *United States ex rel. Clausen v. Lab. Corp. of Am., Inc.*, 290 F.3d 1301, 1307 n. 11 (11th Cir. 2002). A motion to dismiss under Fed.R.Civ.P. 12(b)(6) should be granted only if "it is clear that no relief can be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 72 (1984). "The function of a motion to dismiss 'is merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.'" *Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities, Inc.*, 748 F.2d Cir. 774, 779 (2nd Cir. 1984) (*quoting Geisler v. Petrocelli*, 616 F.2d 636, 639 (2nd Cir. 1980)).

This Court has made it clear that the standard of pleading only provides "fair notice of what [the] claims are and the grounds upon which they rest" and that "it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test." *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514 (2002).

In order to state a claim under Section 1985(3), a plaintiff must allege in the complaint: "1) a conspiracy; 2) motivated by a racial or class based discriminatory animus designed to deprive, directly or indirectly, any person or class of persons to the equal protection of the laws; 3) an act in furtherance of the conspiracy; and 4) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States." *United Bhd. of Carpenters & Joiners, Local 610 v. Scott*, 463 U.S. 825, 828-29 (1983) (*citing Griffin v. Breckenridge*, 403 U.S. 88, 102-3 (1971)).

While only state actors are subject to a Section 1983 claim, a Section 1985(3) action may be brought against anyone conspiring to deprive another of the equal protection of the laws, or of equal privileges and immunities under the laws. *Burrell v. Bd. of Trustees of Ga. Military*, 970 F.2d 785 (11th Cir. 1992).

The lower courts dismissed the Petitioners' claim under Section 1985(3) on the basis that the Complaint fails to allege that the Petitioners belonged to a protected class of citizens or that any discriminatory animus motivated the defendants to participate in a conspiracy against the Petitioners. However, a thorough review of Counts X and XII indicates that the Petitioners, while not optimally specific, alleges all the elements of a claim under Section 1985(3) to meet the pleading notice requirements.

Both Counts X and XII begin by listing the numerous constitutional rights that the Defendants violated. Both Counts X and XII state that the Petitioner is an individual that is mentally incapacitated in need of a caretaker. (See Paragraphs 153, 155, 171, 173 of Pet. App. 37-40). Both Counts X and XII state that the Defendants at issue conspired against the Petitioner to deprive her of her constitutional rights. (See Paragraphs 154-157 and 172-176 of Pet. App. 37-40). In response to the filing of motions to dismiss by the Defendants, the Petitioner specifically advised the District Court that the Petitioner is claiming class discrimination based on her mental disability (incapacitation) and that the Defendants conspired against the Petitioner based on her mental disability.

This Court in *Swierkiewicz* "clearly indicates that it is not fatal to Plaintiff's case that some of his allegations at

this stage may be legal conclusions rather than facts." *Greenier v. Pace, Local No. 1188*, 201 F.Supp.2d 172, 177 (D.Me. 2002). In light of the liberal standard of reviewing pleadings pursuant to a Motion to Dismiss, the Petitioners has clearly placed the Defendants on notice of their claim. The Second Amended Complaint alleges in great detail all the facts that led to the filing of the cause of action and specifically outlines the incapacitation of the Petitioner and the theory of conspiracy that led to the Defendants taking control of her finances through the establishment of the guardianship. The lower courts have made a substantial error in not permitting the Plaintiff to continue forward on the pleadings as alleged.

CONCLUSION

For the foregoing reasons, the Petitioners request that the Orders of the lower courts dismissing Counts X and XI be reversed and that this matter be remanded to the District Court.

Respectfully submitted,

RICHARD E. WOLFE, ESQUIRE
Florida Bar No. 0127205
RICHARD E. WOLFE, P.A.
3035 5th Avenue North
St. Petersburg, FL 33713
(727) 323-5514
Fax (727) 323-5519
Attorney for Petitioners

2006 WL 1410041

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 05-16057
Non-Argument Calendar

D. C. Docket No. 04-00003-CV-T-17-EAJ

ESTATE OF JOSEPHINE COSIO,
CARL W. COSIO, Personal Representative
for the Estate of Josephine A. Cosio,

Plaintiffs-Appellants,

versus

DENNIS (JUDGE) ALVAREZ,
LEROY MERKLE, JR., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(Filed May 23, 2006)

Before ANDERSON, BIRCH and COX, Circuit Judges.

PER CURIAM:

Carl Cosio ("Cosio") and the estate of his late mother, Josephine Cosio (the "estate"), appeal the district court's dismissal of their claims in an action arising out of the

appointment of a civil guardian for Josephine Cosio while she was alive. In the district court, Cosio and the estate filed a 22-count complaint alleging claims under 42 U.S.C. §§ 1983 and 1985, as well as several state-law causes of action.

One defendant, Leroy Merkle, Jr., never appeared in court or responded to the complaint. Cosio and the estate moved the Clerk of the court to enter default against Merkle pursuant to Federal Rule of Civil Procedure 55(a). (R.2-85.) The Clerk did not, so Cosio and the estate filed a "Motion for an Order Mandating a Clerk Default" against Merkle.[1] (R.2-104.) Without ruling on this motion, the district court dismissed with prejudice the federal claims against all defendants, including Merkle, finding that neither Cosio nor the estate could prove a set of facts that would entitle them to relief under either statute. (R.2-106 at 3-4.) This appeal followed.

On appeal, Cosio and the estate contend that the district court erred in dismissing the estate's 42 U.S.C. § 1985 claims against Appellees Keithly[2] and Merkle (Count X), Cosio's § 1985 claim against Appellees Keithly and Merkle (Count XI), and the estate's § 1985 claim against Appellees Keithly, Merkle, Tampa Health Center, and Williams.[3] We agree with the district court that

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[1] Cosio and the estate also filed for default against Defendant Barbara Boyd Keithly. (R.1-84.) However, Keithly responded to this motion, and no default issued. The Appellants did not include Keithly in their motion to the district court, so we have no ruling to review on this point with respect to Keithly.

[2] At the time of the Second Amended Complaint, Keithly's last name was Boyd.

[3] The Second Amended Complaint also included, as part of Counts X and XI, claims against the Honorable Dennis F. Alvarez, and as part

(Continued on following page)

neither Cosio nor the estate of Josephine Cosio state a legally cognizable claim under § 1985 against any of the Appellees.

The Appellants additionally contend that the district court erred by dismissing the case with prejudice and thereby not allowing the Appellants to amend their complaint a third time. We disagree. We review the decision whether to dismiss a complaint with or without prejudice for abuse of discretion. *Bryant v. Dupree,* 252 F.3d 1161, 1163 (11th Cir. 2001). Federal Rule of Civil Procedure 15(a) somewhat tempers this discretion by providing that leave to amend a legally insufficient complaint should be "freely given" when justice requires it. Nevertheless, in this case, the court in fact granted leave to amend the Appellants' first pro se complaint, requiring that the amended complaint be drafted by a licensed attorney. The result was the Second Amended Complaint that the court ultimately dismissed. The court correctly determined that this Second Amended Complaint failed to allege any viable federal claim, and the court did not abuse its discretion in dismissing it with prejudice, rather than allowing the drafting of a third amended complaint.

Finally, the Appellants contend that the district court erred in (1) failing to compel the Clerk to enter default against one of the defendants when requested, and (2) dismissing the claims against a defendant who never moved for dismissal. As to the former contention, we find no abuse of discretion in the court's failure to enter, or to

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of Count XII, a claim against Dr. Rene A. Boothby, but the Appellants do not challenge on appeal the district court's dismissal of the claims against these defendants. Appellant's Br. at 15 n.3.

order the clerk to enter, a default judgment against Merkle, given the fact that the Second Amended Complaint contains no viable federal claim. Similarly, as to the latter contention, under the circumstances of this case the district court had the power to dismiss the claim on its own motion. *See Byrne v. Nezhat,* 261 F.3d 1075, 1127 n.99 (11th Cir. 2001).

AFFIRMED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ESTATE OF JOSEPHINE COSIO, et al,

Plaintiffs,

v. CASE NO: 8:04-cv-3-T-23EAJ

DENNIS F. ALVAREZ, et al,

Defendants. /

ORDER

(Filed Oct. 7, 2005)

Carl W. Cosio and the Estate of Josephine Cosio ("the plaintiffs") sue for deprivation of property in violation of the Fifth and Fourteenth Amendments and for violations of 42 U.S.C. §§ 1983 and 1985 (Doc. 64). The plaintiffs also sue for breach of fiduciary duty, malicious prosecution, abuse of process, and intentional infliction of emotional distress (Doc. 64). This case stems from a guardianship action previously adjudicated in state court. The defendants include retired Hillsborough County Chief Judge F. Dennis Alvarez ("Judge Alvarez"); Leroy Merkle an attorney ("Merkle"); Barbara Boyd Keithly, a licensed provider of guardianship services ("Keithly"); Beverly Enterprises, owner of Tampa Health Center ("Beverly Enterprises"); Dr. Oswald Williams, a physician employed by the Tampa Health Center ("Dr. Williams"); and, Dr. Rene A. Boothby, a practicing physician ("Dr. Boothby").

At all times relevant to the complaint, Judge Alvarez acted in his official capacity as a member of the Florida

judiciary. Every member of the Florida judiciary enjoys absolute judicial immunity. *See Stump v. Sparkman,* 435 U.S. 349, 355-57 (1978). "A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors." *Id.* at 359. *See Bolin v. Story,* 225 F.3d 1234, 1239-42 (11th Cir. 2000). Allegations of bad faith or malice fail to overcome judicial immunity.[1] *Mireless v. Waco,* 502 U.S. 9, 11 (1991). Accordingly, Judge Alvarez's motion to dismiss (Doc. 67) is **GRANTED** and all claims against Judge Alvarez are **DISMISSED WITH PREJUDICE**.

The complaint alleges (Doc. 64, at 16-26) that Merkle and Keithly violated the plaintiffs' Fourteenth Amendment liberties under 42 U.S.C. § 1983 and deprived the plaintiffs of property without due process of law in violation of the Fifth and Fourteenth Amendments. Throughout the complaint, the plaintiffs allege in a conclusory manner that Merkle and Keithly are "state actors" who acted "under the color of law as a result of the guardianship statutes established by Florida law and the State of Florida" (Doc. 64). The plaintiffs essentially claim that, by acting according to Florida's guardianship statutes, these otherwise private defendants became state actors. If the defendants' conduct satisfies the state-action requirement of the Fourteenth Amendment, the same conduct also constitutes action "under color of state law" for purposes of Section 1983. *Lugar v. Edmondson Oil Co.,* 457 U.S. 922, 935 (1982).

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[1] Citation in this order to the legal standards of "grave procedural error," "bad faith," and "malice" carries no implication that former Chief Judge Alvarez's adjudications include an example of any of these three.

Merkle and Keithly are private citizens who are neither employed nor directed by the state. Their initiation of and participation in the guardianship process does not become a state action merely because it is allowed by state statute. *See, e.g., Dahl v. Akin,* 630 F.2d 277 (5th Cir. 1980). "[O]ne who has obtained a state court order or judgment is not engaged in state action merely because [he] used the state court legal process." *Cobb v. Georgia power Co.,* 757 F.2d 1248, 1251 (11th Cir. 1985). To hold otherwise, as Judge Posner reasoned in *Spencer v. Lee,* 864 F.2d 1376 (7th Cir. 1989) (en banc), *cert. denied,* 494 U.S. 1016 (1990), would be to insist that a citizen's arrest, a creditor's repossession of chattel, or a property owner's ejection of a trespasser qualify as state action even though these are merely private activities authorized by state law. 757 F.2d at 1379-81. The plaintiffs' Fifth Amendment, Fourteenth Amendment, and Section 1983 claims against Merkle and Keithly are **DISMISSED WITH PREJUDICE**.

The plaintiffs also allege (Doc. 64, at 27-33) that Beverly Enterprises, Dr. Williams, Dr. Boothby, Merkle, and Keithly conspired to deprive the plaintiffs of various constitutional rights under 42 U.S.C. § 1985(3). Claims brought under Section 1985(3) are strictly limited to those alleging racial or class-based animus. *Kimble v. D.J. McDuffy, Inc.,* 648 F.2d 340, 345 (5th Cir. 1981). In *Kimble,* the court held that 42 U.S.C. § 1985 encompasses only those conspiracies motivated by an animus against the kind of classes Congress sought to protect when it enacted the Ku Klux Klan Act in 1871. 648 F.2d at 345-46. Thus, to properly plead a violation of Section 1985(3), the plaintiffs must allege that the defendants were motivated by some racial or otherwise class-based discriminatory animus. The

plaintiffs' complaint fails to allege that the plaintiffs belong to a protected class of citizens entitled to the protections of 42 U.S.C. § 1985 or that any discriminatory animus motivated the defendants to participate in a conspiracy against the plaintiffs. Therefore, the plaintiffs' Section 1985 claims are **DISMISSED**.

The complaint's remaining claims raise no federal question under 28 U.S.C. § 1331, and no basis for original jurisdiction exists. Because the plaintiffs' federal claims are dismissed, the court, under 28 U.S.C. § 1367(c)(3), declines to exercise jurisdiction over any of the plaintiffs' remaining state claims. Accordingly, all remaining state claims are **REMANDED**. The Clerk is directed to (1) mail a certified copy of this order, pursuant to 28 U.S.C. § 1447(c), to the Clerk of the Circuit Court for Hillsborough County, (2) terminate any pending motion, and (3) close the case.

ORDERED in Tampa, Florida, on October 7, 2005.

/s/ Steven D. Merryday
STEVEN D. MERRYDAY
UNITED STATES
DISTRICT JUDGE

cc: US Magistrate Judge
Courtroom Deputy

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ESTATE OF JOSEPHINE ALVAREZ COSIO, by and through Her son, CARL W. COSIO, as Personal Representative, and CARL W. COSIO, as Son, Beneficiary, Family Member, Interested Party, and Indispensable Party,

Plaintiffs,

Vs. Case No.: 8:04-CV-3-T-27EAJ

DENNIS F. ALVAREZ, Past Chief Judge; SUSAN SEXTON, Judge; NICK FICARROTTA, JR., Judge/Hearing Master; RALPH C. STODDARD, Judge; LEROY MERKLE, JR., Attorney; TIM MORAN, Attorney; RICHARD C. MINARDI, Attorney; SHERRI TISH, Attorney; BARBARA BOYD KEITHLY, Guardian; CLAUDIA R. ISOM, Judge; DR. BALA RAO; DR. CESAR RUIZ; SHEILA COLES, Social Worker; TAMPA HEALTH CENTER, Agent Nursing Facility for Beverly Enterprises doing business in Tampa, Florida; DR. OSWALD WILLIAMS; Medical Director for Tampa Health Center; JOHN (LAST NAME IDENTIFIED), Speech Therapist, Tampa Health Center; BEN (LAST NAME IDENTIFIED), Fourth Floor Nurse, Tampa Health Center; DR. RENE A. BOOTHBY, E.N.T.; ST. JOSEPH'S HOSPITAL; MEDICAL EXAMINER'S OFFICE; NATIONS BANK; STATE OF FLORIDA GUARDIANSHIP; and others not able to be identified at this time That participated as joint tortfeasors causing, aiding, and abetting With Defendants that caused damage to the Estate of Josephine A. Cosio, herself, the family members, beneficiary And Personal Representatives, reserve, the unknown #20; State of Florida Guardianship and other rights

Defendants. /

SECOND AMENDED COMPLAINT

GENERAL ALLEGATIONS

COMES NOW, the Plaintiffs, ESTATE OF JOSEPHINE ALVAREZ COSIO, by and through her son, CARL W. COSIO, as Personal Representative (Hereinafter "ESTATE") and CARL W. COSIO, individual (Hereinafter "COSIO") and sues the Defendants, DENNIS F. ALVAREZ, former Hillsborough County Judge (Hereinafter "JUDGE ALVAREZ"); LEROY MERKLE, JR., attorney (Hereinafter "MERKLE"). BARBARA BOYD KEITHLY, guardian (Hereinafter "BOYD"); TAMPA HEALTH CENTER, agent nursing facility for Beverly Enterprises doing business in Tampa, Florida (Hereinafter "TAMPA HEALTH"); DR. OSWALD WILLIAMS, Medical Director for Tampa Health Center (Hereinafter "DR. WILLIAMS") and DR. RENE A. BOOTHBY (Hereinafter "DR. BOOTHBY") and alleges:

1. The Plaintiff, ESTATE, is a legally recognized estate opened upon the death of Josephine Alvarez Cosio in Hillsborough County, Florida with Plaintiff, COSIO, as designated personal representative of said estate with case No. 2000-000349.

2. The Plaintiff, COSIO, is a citizen and resident of Hillsborough County, Florida.

3. The Defendant, JUDGE ALVAREZ, is the former Chief Judge of the Hillsborough County Circuit Court and was the judge assigned to the case styled In Re: Guardianship of Josephine A. Casio, Incapacitated, Case No. 95-2155, Division A

4. The Defendant, MERKLE, is a licensed attorney practicing law in Hillsborough County, Florida.

5. The Defendant, BOYD, is a licensed guardian providing guardianship services in Hillsborough County, Florida.

6. The Defendant, TAMPA HEALTH, is a licensed nursing home providing nursing home care in Hillsborough County, Florida.

7. The Defendant, DR. WILLIAMS, is a licensed physician employed by Defendant, TAMPA HEALTH, in Hillsborough County, Florida.

8. The Defendant, DR. BOOTHBY, is a licensed physician with a medical practice in Hillsborough County, Florida.

9. Josephine Alvarez Cosio (Hereinafter "Mrs. Cosio") executed a durable power of attorney appointing her son, the Plaintiff COSIO, her agent in 1991.

10. From 1991 until 1995, the Plaintiff, COSIO, performed the task of taking care of his mother's financial and medical care in the exceptional manner that would be expected of a son.

11. During this period of time the Plaintiff, COSIO, effectively arranged for his mother's admission into a skilled nursing facility on two separate occasions. These admissions were made with the medical opinions of Dr. Amy and Dr. Pidala at St. Joseph's emergency room.

12. During this period of time the Plaintiff, COSIO, also initiated an application for Medicaid benefits to pay for his mother's nursing home care.

13. At all times the application for Medicaid was pending the nursing home facilities were being partially compensated through Josephine Cosio's social security checks, Medicare and Blue Cross/

Blue Shield insurance policy. Plaintiff, COSIO, was also paying for his mother's prescription drugs during this period of time. These payments were made at the suggestion of Defendant, TAMPA HEALTH.

14. The Plaintiff, COSIO, had difficulties proving his mother's application for purposes of qualifying for Medicaid for a significant period of time because of a bank account that he placed his mothers name that contained a significant amount of money. The reason Plaintiff, COSIO, placed his mother's name on the account was for estate planning purposes only.

15. Medicaid required extensive proof of Mrs. Cosio non-ownership of any of the Plaintiff, COSIO'S, money accounts and the application process extended for a significant period of time. During this period of time Plaintiff, COSIO, kept Defendant, TAMPA HEALTH, advised of the status of the Medicare application and sought legal advice from family attorney friend, Mr. Joseph Garcia.

16. In 1995 the Plaintiff, COSIO, admitted his mother in the nursing home facility for the Defendant, TAMPA HEALTH, because of health concerns.

17. On or around September of 1995 the Plaintiff, COSIO, had to temporarily travel to Kansas City, Missouri in order to resolve issues with his second home being broken into.

18. The Plaintiff, COSIO, left several contact numbers with employees for the Defendant, TAMPA HEALTH, and called to speak to his mother on a daily basis while away. Those contact numbers were placed in the front of Mrs. Cosio's medical file.

19. Upon the Plaintiff, COSIO, leaving for Kansas City, the Defendant, TAMPA HEALTH, decided that they would no longer accept Mrs. Cosio's partial payments through social security, Medicare nor Blue Cross/Blue Shield insurance pending full payment from Medicaid.

20. The Defendant, TAMPA HEALTH, notified the Defendants, MERKLE and BOYD, of Mrs. Cosio's financial position and requested that MERKLE and BOYD petition the court to set up a guardianship so that they could receive fill payment for their services.

21. The Defendants, TAMPA HEALTH, MERKLE and BOYD, had knowledge during this period of time that Mrs. Cosio was named as joint account holder on bank accounts of the Plaintiff, COSIO, of a substantial sum of money.

22. On or about September 28, 1995 Defendants, MERKLE and BOYD, successfully petitioned the Court to be named as emergency temporary guardian. Prior to this petition the Defendants, TAMPA HEALTH, MERKLE and BOYD, failed to contact the Plaintiff, COSIO, at the numerous contact numbers that were available.

23. On or about November 16, 1995, the Defendants, MERKLE and BOYD, successfully petitioned the court to have Defendant, BOYD, become plenary guardian of Mrs. Cosio.

24. Defendants, MERKLE and BOYD, immediately began proceedings to seize the bank accounts of the Plaintiff, COSIO, and to take possession of the homestead shared between Mrs. Cosio and Defendant, COSIO.

25. Upon returning home from his trip to Kansas City, the Plaintiff, COSIO, discovered that he had been locked out of his mother's home (in which he had lived his entire life and contained all his possessions) and was advised that the homestead was being marketed for sale.

26. The Plaintiff, COSIO, immediately made objections to the actions of Defendants, MERKLE and BOYD, as well as objections to Defendant, BOYD, being the named guardian instead of himself.

27. The Defendants, MERKLE and BOYD, defended the need for a guardian on the basis that Plaintiff, COSIO, was stealing the funds of his mother in the joint account and was therefore unfit to be her guardian. The Defendants had no factual basis for this allegation which also resulted in a fraud investigation.

28. On or about January of 1996, after the Plaintiff, COSIO, complied with all requests from Medicaid, Mrs. Cosio obtained conditional approval of her application for Medicaid coverage, which was retroactive to April 1995. Defendant, TAMPA HEALTH, was receiving full payment for all services for Mrs. Cosio's care after this point in time.

29. Following this determination Defendant, JUDGE ALVAREZ, ruled, after conducting an evidentiary hearing, that the funds in the accounts at issue were owned exclusively by Plaintiff, COSIO, and his mother was only placed on the account for estate planning purposes. Plaintiff, COSIO, was cleared of any accusations or charges of fraud involving his mother. Plaintiff, COSIO, also advised the Court that he would pay any monies for

his mother's care that was not being paid by Medicaid after approval of his mother's application.

30. On or about August 7, 1997, the Defendants, MERKLE and BOYD, submitted a bill for their services and attempted to collect from both Mrs. Cosio's protected homestead or Plaintiff, COSIO, individually.

31. At this point in time Mrs. Cosio finances were only her social security, her three named trust funds and her homesteaded property. The Defendants, MERKLE and BOYD, had no duties to conduct other than ensuring Mrs. Cosio was obtaining proper medical care.

32. The Defendants, MERKLE and BOYD, had also entered into the guardianship of Mrs. Cosio with the understanding that their fees and costs may not be reimbursed by Mrs. Cosio's assets if she was found indigent.

33. On or about June 5, 1998, Defendants, MERKLE and BOYD, requested and Defendant, JUDGE ALVAREZ, approved the fees of the Defendants, MERKLE and BOYD. Defendant, JUDGE ALVAREZ, went further in his ruling and ordered that the homestead of Mrs. Cosio be sold to resolve the fees of Defendants, MERKLE and BOYD, and more egregiously, that Plaintiff, COSIO, be personally liable for these fees and costs because of his numerous objections to the establishment of the guardianship.

34. Plaintiff, COSIO, appealed this order from Defendant, JUDGE ALVAREZ, but was forced to defend ongoing attempts by Defendants, MERKLE and BOYD, to collect their fees from the Plaintiff, COSIO, personally.

c. Such other relief as this Court deems just and proper.

COUNT VII - PLAINTIFF ESTATE'S DEPRIVATION OF FOURTEENTH AMENDMENT LIBERTIES 42 U.S.C. § 1983 - DEFENDANT BOYD

111. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

112. Mrs. Cosio has a fundamental right to familial relations, integrity, privacy, and association with her son, Plaintiff, CARL COSIO.

113. Mrs. Cosio has a right to be free from deprivation of her liberty interest in maintaining her familial relationship with her son under the Fourteenth Amendment.

114. Mrs. Casio has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

115. Mrs. Casio has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

116. Mrs. Cosio has fundamental privacy right to decide who her caretaker will be during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

117. Mrs. Cosio designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

118. Defendant, BOYD, has acted to defeat Mrs. Cosio's state and federal rights by inappropriately and unlawfully seeking designation of herself as legal guardians of Mrs. Cosio's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother.

119. This action was taken by Defendant, BOYD, as a "state actor" under the "color of law" as a result of the guardianship statutes established by Florida law and the State of Florida.

120. As a direct result of Defendant, BOYD, actions, the Plaintiff, ESTATE, has been damaged in that Mrs. Cosio was limited and in some circumstances completely removed from the care and familial privacy protected by the U.S. Constitution.

121. As a direct result of Defendant, BOYD, actions, the Plaintiff, ESTATE, has been damaged in that Mrs. Cosio was denied needed medical care because of the retaliatory animus of the Defendant, BOYD as guardian appointed to be Mrs. Cosio's caretaker that resulted in serious harm to Mrs. Cosio during her final days.

122. As a farther result of Defendant, BOYD, actions, taken in deliberate and knowing indifference to Mrs. Cosio's constitutional rights, Mrs. Cosio suffered irreparable harm by the wholesale deprivations of her liberties.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT VIII – PLAINTIFF COSIO'S DEPRIVATION OF FOURTEENTH AMENDMENT LIBERTIES 42 U.S.C. 1983 – DEFENDANT MERKLE

123. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

124. COSIO has a fundamental right to familial relations, integrity, privacy, and association with his mother, Mrs. Casio.

125. COSIO has a right to be free from deprivation of his liberty interest in maintaining his familial relationship with his mother under the Fourteenth Amendment.

126. COSIO has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

127. COSIO has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

128. COSIO has fundamental privacy right to be the caretaker of his mother during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

129. Mrs. Cosio designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the

preference of family members being designated guardians upon incapacitation.

130. Defendant, MERKLE, has acted to defeat COSIO'S state and federal rights by inappropriately and unlawfully seeking designation of third parties as legal guardians of his mother's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother.

131. This action was taken by Defendant, MERKLE, as a "state actor" under the "color of law" as a result of the guardianship statutes established by Florida law and the State of Florida.

132. As a direct result of Defendant, MERKLE, actions, the Plaintiff, COSIO, has been damaged in that Mrs. Cosio was limited and in some circumstances completely removed from the care and familial privacy protected by the U.S. Constitution.

133. As a direct result of Defendant, MERKLE, actions, the Plaintiff, COSIO, has been damaged in that Mrs. Cosio was denied needed medical care because of the retaliatory animus of the Defendant, MERKLE, and the guardian appointed to be Mrs. Cosio's caretaker that resulted in serious harm to Mrs. Cosio during her final days.

134. As a further result of Defendant, MERKLE, actions, taken in deliberate and knowing indifference to COSIO'S constitutional rights, COSIO suffered irreparable harm by the wholesale deprivations of his liberties and rights.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT IX – PLAINTIFF COSIO'S DEPRIVATION OF FOURTEENTH AMENDMENT LIBERTIES 42 U.S.C. § 1983 – DEFENDANT BOYD

135. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

136. COSIO has a fundamental right to familial relations, integrity, privacy and association with his mother, Mrs. Cosio.

137. COSIO has a right to be free from deprivation of his liberty interest in maintaining his familial relationship with his mother under the Fourteenth Amendment.

138. COSIO has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

139. COSIO has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

140. COSIO has a fundamental privacy right to be the caretaker of his mother during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

141. Mrs. Cosio's designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

142. Defendant, BOYD, has acted to defeat COSIO'S state and federal rights by inappropriately and unlawfully seeking designation of herself as legal guardian of Mrs. Cosio's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother.

143. This action was taken by Defendant, BOYD, as a "state actor" under the "color of law" as a result of the guardianship statutes established by Florida law and the State of Florida.

144. As a direct result of Defendant, BOYD, actions, the Plaintiff, COSIO, has been damaged in that Mrs. Cosio was limited and in some circumstances completely removed from the care and familial privacy protected by the U.S. Constitution.

145. As a direct result of Defendant, BOYD, actions, the Plaintiff, COSIO, has been damaged in that Mrs. Cosio was denied needed medical care because of the retaliatory animus of the Defendant, BOYD, as guardian appointed to Mrs. Cosio's caretaker that resulted in serious harm to Mrs. Cosio during her final days.

146. As a further result of Defendant, BOYD, actions, taken in deliberate and knowing indifference to COSIO'S constitutional rights, COSIO suffered irreparable harm by the wholesale deprivations of her liberties.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT X – PLAINTIFF ESTATE'S 42 U.S.C. § 1985 – DEFENDANT JUDGE ALVAREZ, MERKLE AND BOYD

147. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-145 above as though fully re-alleged herein.

148. Mrs. Cosio has a fundamental right to familial relations, integrity, privacy, and association with her son, Plaintiff, COSIO.

149. Mrs. Cosio has a right to be free from deprivation of her liberty interest in maintaining her familial relationship with her son under the Fourteenth Amendment.

150. Mrs. Cosio has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

151. Mrs. Cosio has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

152. Mrs. Cosio has a due process right not to be deprived of her property without due process of law as guaranteed in the Fifth Amendment

made applicable to the States by the Fourteenth Amendment.

153. Mrs. Cosio has fundamental privacy right to decide who her caretaker will be during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

154. 42 U.S.C. § 1985 provides for a cause of action when two or more persons conspire to deprive, either directly or indirectly, that individual from their constitutional rights.

155. Mrs. Cosio designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

156. Defendant, JUDGE ALVAREZ, MERKLE and BOYD, has acted to defeat Mrs. Cosio's state and federal rights by inappropriately and unlawfully seeking designation of herself [sic] as legal guardians of Mrs. Cosio's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother as well as other deprivations previously described in this Complaint.

157. As a direct result of Defendant, JUDGE ALVAREZ, MERKLE and BOYDS [sic], concerted actions, taken in deliberate and knowing indifference to Mrs. Cosio's constitutional rights, Mrs. Cosio suffered irreparable harm by the wholesale deprivations of her liberties.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT XI – PLAINTIFF COSIO'S 42 U.S.C. § 1985 – DEFENDANT JUDGE ALVAREZ, MERKLE AND BOYD

158. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-145 above as though fully re-alleged herein.

159. COSIO has a fundamental right to familial relations, integrity, privacy and association with his mother, Mrs. Cosio.

160. COSIO has a right to be free from deprivation of his liberty interest in maintaining his familial relationship with his mother under the Fourteenth Amendment.

161. COSIO has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

162. COSIO has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

163. COSIO has a fundamental privacy right to be the caretaker of his mother during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

164. Mrs. Cosio's designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

165. 42 U.S.C. § 1985 provides for a cause of action when two or more persons conspire to deprive, either directly or indirectly, that individual from their constitutional rights.

166. Mrs. Cosio designation [sic] her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

167. Defendant, JUDGE ALVAREZ, MERKLE and BOYD, has acted to defeat COSIO'S state and federal rights by inappropriately and unlawfully seeking designation of herself [sic] as legal guardians of Mrs. Cosio's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother as well as other deprivations previously described in this Complaint.

168. As a direct result of Defendant, JUDGE ALVAREZ, MERKLE and BOYDS [sic], concerted actions, taken in deliberate and knowing indifference to COSIO'S constitutional rights, COSIO suffered irreparable harm by the wholesale deprivations of his liberties.

WHEREFORE, plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT XII – PLAINTIFF ESTATE'S 42 U.S.C. § 1985 – DEFENDANT MERKLE, BOYD, TAMPA HEALTH, DR. WILLIAMS AND DR. BOOTHBY

169. Plaintiff, ESTATE, adopts and incorporates by reference paragraphs 1-145 above as though fully re-alleged herein.

170. Mrs. Cosio has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

171. Mrs. Cosio has fundamental privacy right to decide who her caretaker will be during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

172. 42 U.S.C. § 1985 provides for a cause of action when two or more persons conspire to deprive, either directly or indirectly, that individual from their constitutional rights.

173. Mrs. Cosio designation her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

174. Defendant, MERKLE, BOYD, TAMPA HEALTH, DR. WILLIAMS, and DR. BOOTHBY have conspired to defeat Mrs. Cosio's state and federal

rights by inappropriately and unlawfully denying her health care, therapy and testing that she needed during her tenure as a resident of TAMPA HEALTH.

175. DR. BOOTHBY refused to provide critical treatment at the threat of litigation by Defendants, MERKLE and BOYD.

176. As a direct result of Defendant, MERKLE, BOYD, TAMPA HEALTH, DR. WILLIAMS and DR. BOOTHBY, concerted actions, taken in deliberate and knowing indifference to Mrs. Cosio's constitutional rights, Mrs. Cosio suffered irreparable harm by the wholesale deprivations of her liberties.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT XIII - PLAINTIFF COSIO'S 42 U.S.C. § 1985-DEFENDANT JUDGE ALVAREZ, MERKLE AND BOYD

177. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-145 above as though fully re-alleged herein.

178. COSIO has a fundamental right to familial relations, integrity, privacy and association with his mother, Mrs. Cosio.

179. COSIO has a right to be free from deprivation of his liberty interest in maintaining his familial relationship with his mother under the Fourteenth Amendment.

180. COSIO has a right to be free from deprivation of life and liberty without due process of law under the Fifth Amendment as made applicable to the states by the Fourteenth Amendment.

181. COSIO has a right of personal privacy protected by virtue of the First, Third, Fourth, Fifth, Ninth and Fourteenth Amendments.

182. COSIO has a fundamental privacy right to be the caretaker of his mother during her later years and has the right to be free of third parties taking those decisions from her upon her incapacitation.

183. Mrs. Cosio's designation her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

184. 42 U.S.C. § 1985 provides for a cause of action when two or more persons conspire to deprive, either directly or indirectly, that individual from their constitutional rights.

185. Mrs. Cosio designation her son, Plaintiff, COSIO, as her lawful caretaker prior to her incapacitation and Florida law upholds the preference of family members being designated guardians upon incapacitation.

186. Defendant, JUDGE ALVAREZ, MERKLE and BOYD, has acted to defeat COSIO'S state and federal rights by inappropriately and unlawfully seeking designation of herself as legal

guardians of Mrs. Cosio's financial and health care despite continual evidence presented to the Defendant to make the correct determination of the Plaintiff, COSIO, as the proper guardian of his mother as well as other deprivations previously described in this Complaint.

187. As a direct result of Defendant, JUDGE ALVAREZ, MERKLE and BOYDS, concerted actions, taken in deliberate and knowing indifference to COSIO'S constitutional rights, COSIO suffered irreparable harm by the wholesale deprivations of his liberties.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. An award of fees and costs pursuant to 42 U.S.C. § 1988.

c. Such other relief as this Court deems just and proper.

COUNT XIV – PLAINTIFF ESTATE'S BREACH OF FIDUCIARY DUTY – DEFENDANT BOYD

188. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

189. Defendant, BOYD, owed a fiduciary duty toward Plaintiff, ESTATE, as appointed guardian and, as such, owed a duty of utmost loyalty to Plaintiff, ESTATE, unclouded by personal interest.

190. As a feature of fiduciary duty, BOYD was obligated under state law to recognize and to respect all of Plaintiff's retained rights pursuant to Florida law, including her right to habilitation, her right to necessities, her right to no [sic] have her property and assets disposed of without notice and opportunity to be heard, her right to be returned to capacity at the earliest moment, her right to receive visitors and to communicate with others, her right to be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation, her right to have her financial affairs managed in a prudent manner, and her right to a qualified guardian free of retaliatory intent or malice.

191. BOYD has breached these fiduciary duties towards Plaintiff, ESTATE, as described factually in this Complaint.

192. Furthermore BOYD has forbade Defendant, TAMPA HEALTH, and other defendants from performing necessary medical testing and therapy for rehabilitation of the Plaintiff, ESTATE, as well as attempting to limit the visitation and care of her son, Plaintiff, COSIO.

193. Plaintiff, ESTATE, as a result of this breach of duty has been profoundly and irreparably harmed by her treatment by Defendant, BOYD, in that she was placed in a nursing home facility that negligently allowed her to fall and seriously injure herself, readmitted her to this nursing home following this injury, failed to move Mrs. Casio to another nursing home for safety against prior court order; failed to receive necessary medical testing and therapy,

and the limitation of the visitation and care of her son. Plaintiff, COSIO.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. Such other relief as this Court deems just and proper.

COUNT XV – PLAINTIFF ESTATE'S BREACH OF FIDUCIARY DUTY – DEFENDANT TAMPA HEALTH

194. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

195. Defendant, TAMPA HEALTH, owed a fiduciary duty toward Plaintiff, ESTATE, as appointed nursing home facility for the guardianship, and, as such, owed a duty of utmost loyalty to Plaintiff, ESTATE, unclouded by personal interest.

196. As a feature of fiduciary duty, TAMPA HEALTH was obligated under state and federal law to recognize and to respect all of Plaintiff's retained rights pursuant to Florida law, including her right to rehabilitation, her right to necessities, her right to privacy, her right to be returned to capacity at the earliest moment, her right to receive visitors and to communicate with others, her right to be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.

197. TAMPA HEALTH has breached these fiduciary duties towards Plaintiff, ESTATE, as described factually in this Complaint.

198. Furthermore TAMPA HEALTH has refused to permit necessary medical testing and therapy for rehabilitation of the Plaintiff, ESTATE, as well as attempting to limit the visitation and care of her son, Plaintiff, COSIO.

199. Furthermore, TAMPA HEALTH, unnecessarily initiated the guardianship proceedings that resulted in the ESTATE having her wishes to have her son, COSIO, named legal guardian ignored and resulted in the guardianship that violated the rights of the ESTATE as described in the complain [sic].

200. Plaintiff, ESTATE, as a result of this breach of duty has been profoundly and irreparably harmed by her treatment by Defendant, TAMPA HEALTH, in that she failed to receive necessary medical testing and therapy, and the limitation of the visitation and care of her son, Plaintiff, COSIO and had her rights violated by the establishment of the guardianship.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. Such other relief as this Court deems just and proper.

COUNT XVI – PLAINTIFF ESTATE'S BREACH OF FIDUCIARY DUTY – DEFENDANT DR. WILLIAMS

201. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

202. Defendant, DR. WILLIAMS, owed a fiduciary duty toward Plaintiff, ESTATE, as a physician employed by Defendant, TAMPA HEALTH, as appointed nursing home facility for the guardianship, and, as such, owed a duty of utmost loyalty to Plaintiff ESTATE, unclouded by personal interest. DR. WILLIAMS has a greater duty to care for and medically treat the Plaintiff as a result of being a licensed doctor in the State of Florida.

203. As a feature of fiduciary duty, DR. WILLIAMS was obligated under state law to recognize and to respect all of Plaintiff's retained rights pursuant to Florida law and Medicare/Medicaid contracts and to give the Plaintiff medical treatment when medically needed, including her right to rehabilitation, her right to necessities, her right to privacy, her right to be returned to capacity at the earliest moment, her right to receive visitors and to communicate with others, her right to be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.

204. DR. WILLIAMS has breached these fiduciary duties towards Plaintiff, ESTATE, by refusing to permit and perform medical treatment and therapy when he knew it was immediately medically necessary for the survival of Mrs. Cosio.

205. Plaintiff, ESTATE, as a result of this breach of duty has been profoundly and irreparably harmed by her treatment by Defendant, DR. WILLIAMS, in that she failed to receive necessary medical testing and therapy for her survival.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. Such other relief as this Court deems just and proper.

COUNT XVII - PLAINTIFF ESTATE'S BREACH OF FIDUCIARY DUTY - DEFENDANT DR. BOOTHBY

206. Plaintiff, ESTATE, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

207. Defendant, DR. BOOTHBY, owed a fiduciary duty toward Plaintiff, ESTATE, as a physician with a duty to care for and medically treat the Plaintiff as a result of being a licensed doctor in the State of Florida.

208. As a feature of fiduciary duty, DR. BOOTHBY was obligated under state and federal law to recognize and to respect all of Plaintiff's retained rights pursuant to Florida and federal law and to give the Plaintiff medical treatment when medically needed, including her right to rehabilitation, her right to necessities, her right to privacy, her right to be returned to capacity at the earliest moment, her right to receive visitors and to communicate with others, her right to be treated humanely, with dignity and respect, and to be protected against abuse, neglect, and exploitation.

209. DR. BOOTHBY has breached these fiduciary duties towards Plaintiff, ESTATE, by refusing to permit and perform medical treatment and

therapy when he knew it was medically necessary for the survival of Mrs. Cosio.

210. Plaintiff, ESTATE, as a result of this breach of duty has been profoundly and irreparably harmed by her treatment by Defendant, DR. BOOTHBY, in that she failed to receive necessary medical testing and therapy for her survival.

WHEREFORE, Plaintiff, ESTATE, seeks the relief:

a. An award of compensatory damages in favor of ESTATE;

b. Such other relief as this Court deems just and proper.

COUNT XIII - PLAINTIFF COSIO'S MALICIOUS PROSECUTION - DEFENDANT MERKLE

211. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

212. Defendant, MERKLE, initiated a civil complaint against the Plaintiff, COSIO, for outstanding attorney's fees owed to Plaintiff, ESTATE.

213. This Complaint was filed following the 2nd DCA ruling on February 4, 2000 in which the appeals court held that Plaintiff, COSIO, did not personally owe the Defendant, MERKLE, attorneys fees and disallowed the sale of Plaintiff, COSIO, homestead property.

214. Defendant, MERKLE, filed this civil complaint against Plaintiff, COSIO, in an individual capacity and on behalf of Defendant, BOYD.

215. The complaint was dismissed as a result of a lack of prosecution.

216. There was no basis for filing this complaint since the issue was already on appeal and the resulting ruling was in favor of the Plaintiff, COSIO.

217. The complaint was filed with a malicious intent because of the ill will the Defendant, MERKLE, had for Plaintiff, COSIO, because of his fee not being paid for the work conducted pursuant to the contract with Defendant, BOYD.

218. As a result of the filing of this complaint the Plaintiff, COSIO, suffered the cost of hiring an attorney to defend him in the action, pain and suffering and mental distress.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO;

b. Such other relief as this Court deems just and proper.

COUNT XIX – PLAINTIFF COSIO'S MALICIOUS PROSECUTION – DEFENDANT BOYD

219. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

220. Defendant, BOYD. initiated a civil complaint against the Plaintiff, COSIO, for outstanding guardianship fees owed to Plaintiff, ESTATE.

221. This Complaint was filed following the 2nd DCA ruling on February 4, 2000 in which the appeals court held that Plaintiff, COSIO, did not personally owe the Defendant, BOYD, guardianship fees and disallowed the sale of Plaintiff, COSIO, homestead property.

222. Defendant, BOYD, filed this civil complaint against Plaintiff, COSIO, in an individual capacity.

223. The complaint was dismissed as a result of a lack of prosecution.

224. There was no basis for filing this complaint since the issue was already on appeal and the resulting ruling was in favor of the Plaintiff, COSIO.

225. The complaint was filed with a malicious intent because of the ill will the Defendant, BOYD, had for Plaintiff, COSIO, because of her fee not being paid for the work conducted creating and maintaining an improper guardianship.

226. As a result of the filing of this complaint the Plaintiff, COSIO, suffered the cost of hiring an attorney to defend him in the action, pain and suffering and mental distress.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO;

b. Such other relief as this Court deems just and proper.

COUNT XX - PLAINTIFF COSIO'S ABUSE OF PROCESS - DEFENDANT MERKLE

227. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

228. Defendant, MERKLE, initiated a civil complaint against the Plaintiff, COSIO, for outstanding attorney's fees owed to Plaintiff, ESTATE.

229. This Complaint was filed following the 2nd DCA ruling in February 4, 2000 in which the appeals court held that Plaintiff, COSIO, did not personally owe the Defendant, MERKLE, attorneys fees and disallowed the sale of Plaintiff, COSIO, homestead property.

230. Defendant, MERKLE, filed this civil complaint against Plaintiff, COSIO, in an individual capacity and on behalf of Defendant, BOYD.

231. The complaint was dismissed as a result of a lack of prosecution.

232. There was no basis for filing this complaint since the issue was already on appeal and the resulting ruling was in favor of the Plaintiff, BOYD.

233. The complaint was filed with a malicious intent because of the ill will the Defendant, MERKLE, had for Plaintiff, COSIO, because of his fee not being paid for the work conducted pursuant to the contract with Defendant, BOYD, and with the improper purpose of trying to force the Plaintiff to pay his fee.

234. Further, the Defendant, MERKLE, used the guardianship legal proceedings and estate legal

proceedings to make numerous invalid objections and slanderous statements as well as threats in an effort to force Plaintiff, COSIO, to pay his fees.

235. As a result of the filing of this complaint the Plaintiff, COSIO, suffered the cost of hiring an attorney to defend him in the action and represent him in the guardianship and estate proceedings, pain and suffering and mental distress.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO;

b. Such other relief as this Court deems just and proper.

COUNT XXI – PLAINTIFF COSIO'S ABUSE OF PROCESS – DEFENDANT BOYD

236. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

237. Defendant, BOYD, initiated a civil complaint against the Plaintiff, COSIO, for outstanding attorney's fees owed to Plaintiff ESTATE.

238. This Complaint was filed following the 2nd DCA ruling in February 4, 2000 in which the appeals court held that Plaintiff, COSIO, did not personally owe the Defendant, BOYD, guardianship fees and disallowed the sale of Plaintiff, COSIO, homestead property.

239. Defendant, BOYD, filed this civil complaint against Plaintiff, COSIO, in an individual capacity.

240. The complaint was dismissed as a result of a lack of prosecution.

241. There was no basis for filing this complaint since the issue was already on appeal and the resulting ruling was in favor of the Plaintiff, COSIO.

242. The complaint was filed with a malicious intent because of the ill will the Defendant, BOYD, had for Plaintiff, COSIO, because of her fee not being paid for the work conducted in creating and maintaining an improper guardianship and with the improper purpose of trying to force the Plaintiff to pay her fee.

243. Further, the Defendant, BOYD, used the guardianship legal proceedings and estate legal proceedings to make numerous invalid objections and slanderous statements as well as threats in an effort to force Plaintiff, COSIO, to pay her fees.

244. As a result of the filing of this complaint the Plaintiff, COSIO, suffered the cost of hiring an attorney to defend him in the action and represent him in the guardianship and estate proceedings, pain and suffering and mental distress.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO;

b. Such other relief as this Court deems just and proper.

COUNT XXII – PLAINTIFF COSIO'S INTENTIONAL INFLICTION OF EMOTION DISTRESS – DEFENDANT MERKLE

245. Plaintiff, COSIO, adopts and incorporates by reference Paragraphs 1-46 above as though fully re-alleged herein.

246. The Defendant, MERKLE, advised Plaintiff's prior counsel during the preparations for his mother's funeral and advised Plaintiff that he was going to evict him from his lawfully owned house.

247. The Defendant, MERKLE, interfered with the medical treatment for the Plaintiff, ESTATE, when he knew or should have known that the Plaintiff, ESTATE, had a vital need for the medical treatment being denied.

248. That the Defendant, MERKLE, threatened to have the Plaintiff, COSIO, arrested for attempting to obtain medical treatment for his mother.

249. That all the above-stated statements and actions were done with a malicious intent or in a reckless manner.

250. That the above-mentioned behavior was in an outrageous manner that was beyond the bounds of decency in this community.

251. That the statements and actions of the Defendant, MERKLE, resulted in severe emotional distress to the Plaintiff, COSIO, which resulted in COSIO seeking psychological treatment from Dr. Antonio Gonzalez.

252. As a result of this treatment by Dr. Antonio Gonzalez, the Plaintiff, COSIO, was denied

medical coverage from health insurance companies.

WHEREFORE, Plaintiff, COSIO, seeks the relief:

a. An award of compensatory damages in favor of COSIO.

b. Such other relief as this Court deems just and proper.

JURY TRIAL

Plaintiff demands a jury trial for all issues herein so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to Steven Todd, Esquire, Senior Assistant County Attorney, PO Box 1110, Tampa, FL 33601, Moein Marashi, Esquire, Foley & Lardner, 100 North Tampa Street, Suite 2700, Tampa, FL 33602; Joseph H. Lee, Esquire, Office of the Attorney General, One Mack/Cali Center, Suite 775, 501 East Kennedy Blvd., Tampa, FL 33602, Andrew M. Brown, Esquire, PO Box 1351, Tampa, FL 33601, Leroy H. Merkle, Jr., Esquire, 1207 North Franklin Street, Suite 202, Tampa, FL 33601, Tim Moran, Esquire, PO Box 3306, Tampa, FL 33601; Richard C. Minardi, Esquire, 10 Sandpiper Road, Tampa, FL 33609; Rene A. Boothby, M.D., 4600 Habana Avenue, Tampa, FL 33614; Barbara Boyd Keithly, PO Box 82749, Tampa, FL 33682; Kenneth A. Beytin, Esquire, 100 S. Ashley Drive, Suite 600, Tampa, FL 33602; Legal Department Hillsborough County Medical Examiner, 401 Morgan Street, Tampa, FL 33602; Melody M. Dietsch, Esquire, 410

South Ware Blvd., Suite 1100, Tampa, FL 33619 this 22nd day of September, 2004.

Richard E. Wolfe
Richard E. Wolfe, Esquire
RICHARD E. WOLFE, P.A.
341 3rd Street South
St. Petersburg, FL 33701
(727) 821-1928
Fax: (727) 821-5969
FBN: 0127205